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*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

LUCKY COMPANY, a New Jersey partnership,

Defendant.

Adv. Pro. No. 10-04490 (SMB)

**TRUSTEE'S REQUEST TO ENTER DEFAULT AS TO
DEFENDANT LUCKY COMPANY**

To: CLERK OF THE COURT
UNITED STATES BANKRUPTCY COURT

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq., and the Estate of Bernard L. Madoff, by and through his counsel, Baker & Hostetler LLP, respectfully requests that the Clerk of the Court issue a Certificate of Default against defendant Lucky Company pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule for the Southern District of New York 7055-1, for failure to plead or otherwise defend the above-captioned action as it fully appears from the Court file and from the attached Affidavit.

WHEREFORE, the Trustee respectfully requests that this Court grant the Trustee's request in its entirety and provide for such other relief as this Court deems just and proper.

Dated: New York, New York
December 28, 2017

Of Counsel:

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LUCKY COMPANY, a New Jersey partnership,

Defendant.

Adv. Pro. No. 10-04490 (SMB)

**AFFIDAVIT SUPPORTING ENTRY OF DEFAULT AS TO
DEFENDANT LUCKY COMPANY**

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Michael R. Matthias, being duly sworn, hereby attests as follows:

1. I was admitted pro hac vice into this Court and am a partner at the firm of Baker & Hostetler LLP, which is counsel for Irving H. Picard (“Trustee”), Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) and the estate of Bernard L. Madoff, individually.

2. On November 30, 2010, the Trustee commenced this adversary proceeding by filing a complaint (the “Complaint”) against Lucky Company (“Defaulting Defendant”), and other defendants. (Dkt. No. 1). The Complaint asserted claims pursuant to sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of fraudulent transfers in connection with certain transfers of property by BLMIS to or for the benefit of Defaulting Defendant. (*Id.*).

3. On January 18, 2011, the Clerk of this Court issued a summons upon Defaulting Defendant (the “Summons”). (Dkt. No. 3).

4. On January 18, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Defaulting Defendant. (Dkt. No. 4).

5. On June 16, 2011, the Trustee and Defaulting Defendant entered into a Stipulation Extending Time to Respond and Designating Email Address Upon Which to Serve Defendants (the “Extension Stipulation”) which was filed on June 20, 2011. (Dkt. No. 22). Pursuant to the Extension Stipulation, Defaulting Defendant expressly represented that it: (i) accepts service of the Summons and Complaint in this adversary proceeding; and (ii) waives any defenses based on insufficiency of process or insufficiency of service of process of the Summons and Complaint. (*Id.*).

6. On August 3, 2011, attorney Brian J. Neville, a partner of the firm Lax & Neville, LLP, filed a Notice of Appearance and Request for Service of Papers in this adversary proceeding on behalf of Defaulting Defendant. (Dkt. No. 28).

7. On August 3, 2011, attorney Barry R. Lax, a partner of the firm Lax & Neville, LLP, filed a Notice of Appearance and Request for Service of Papers in this adversary proceeding on behalf of Defaulting Defendant. (Dkt. No. 29).

8. On November 29, 2011, Defaulting Defendant filed a Motion to Withdraw the Reference in this adversary proceeding. (Dkt. No. 39). On August 4, 2014, the District Court issued an Order denying said motion. (Dkt. No. 8 in Case No. 11-cv-08839-JSR, United States District Court, Southern District of New York).

9. On April 17, 2014, Defaulting Defendant filed a Motion to Dismiss this adversary proceeding. (Dkt. No. 114).

10. On October 4, 2017, this Court entered an Order pursuant to Stipulation Agreeing to Apply Decision in the Omnibus Proceedings to this Adversary Proceeding (the “Motion to Dismiss Order”). (Dkt. No. 135). Pursuant to the Motion to Dismiss Order: (i) Counts Two, Three, Four, Five and Six of the Complaint were dismissed with prejudice; (ii) Count Seven of the Complaint was dismissed without prejudice; and (iii) Defaulting

Defendant was required to file its answer to the Complaint on or before thirty (30) days after the Stipulation was so ordered by the Court, i.e., on or before November 3, 2017. (*Id.*).

11. All of the defendants named in the Complaint other than Defaulting Defendant have been dismissed as defendants from this adversary proceeding: Mark Hendler and Denise Hendler (Dkt. No. 13); Brigid Buchanan (Dkt. No. 14); Shirley Charms (Dkt. No. 15); Sandra Ramirez (Dkt. No. 16); Milton Hendler Residuary Trust, Gloria Hendler Revocable Trust, and Gloria Hendler, as trustee and as an individual (Dkt. No. 17); Beth H. Gersten (Dkt. No. 18); Carly Eastern and Erin Eastern (Dkt. No. 26); David Z. Rosensweig (Dkt. No. 110); Roberta E. Tarshis (Dkt. No. 115); Stuart M. Tarshis (Dkt. No. 116); Phyllis M. Eldridge (Dkt. No. 117); Alan Hayes (Dkt. No. 119); Scott H. Read (Dkt. No. 120); Charles Read (Dkt. No. 121); Irving B. Kahn Foundation, Inc. (Dkt. No. 122); Brian Cleary (Dkt. No. 124); Joseph S. Eastern 2004 Irrevocable Trust and Joseph S. Eastern, as trustee and as an individual (Dkt. No. 127); Robin Eastern (Dkt. No. 128); Wedny Wolosoff-Hayes (Dkt. No. 134); and Munchkins, Peter J. Cleary and Leslie Read (Dkt. No. 135).

12. Despite being duly served with the Summons and Complaint, and agreeing in the Stipulation which preceded the Motion to Dismiss Order that it would file an answer to the Complaint on or before thirty (30) days after the Stipulation was so-ordered, Defaulting Defendant did not file an answer or otherwise respond to the Complaint.

13. On November 9, 2017, I sent an email to attorney Brian J. Neville, a partner of the firm Lax & Neville, LLP, counsel of record for Defaulting Defendant in this adversary proceeding, advising him that Defaulting Defendant's answer was past due and that the Trustee would request entry of default and a default judgment if the answer is not

filed on or before November 15, 2017. A true and correct copy of that email is attached hereto as Exhibit A.

14. Defaulting Defendant is the only remaining defendant in this adversary proceeding.

15. Count One of the Complaint is the only claim remaining in this adversary proceeding.

16. Defaulting Defendant is a partnership and is thus neither an infant, an incompetent, or in the military.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.



Michael R. Matthias

Sworn to before me this 28th day of December, 2017.



Notary Public



EXHIBIT A

Matthias, Michael

From: Matthias, Michael
Sent: Thursday, November 09, 2017 2:40 PM
To: 'bneville@laxneville.com'
Subject: APN 10-04490 Lucky Company

Brian,

The answer of Lucky Company to the complaint filed in the above referenced adversary proceeding is past due pursuant to the Stipulation and Order filed on October 4, 2017 (Dkt. 135). This is a courtesy notice that the Trustee will request entry of default and a default judgment if an answer is not filed on or before November 15, 2017.

Michael

Michael Matthias
Partner

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